MONTANA LEGISLATIVE HISTORY

Chapter 449 1983

Bill H _____ S 371 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/14	✓ C	2/11	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/14	___C	2/15	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 371

INTRODUCED BY FULLER, MAZUREK, DOZIER, D. BROWN, YARDLEY

IN THE SENATE

February 5, 1983	Introduced and referred to Committee on Judiciary.
February 15, 1983	Committee recommend bill do pass. Report adopted.
February 16, 1983	Bill printed and placed on members' desks.
February 17, 1983	Second reading, do pass.
February 19, 1983	Correctly engrossed.
February 21, 1983	Third reading, passed. Ayes, 47; Noes, 3. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Judiciary.
March 15, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 21, 1983	Second reading, concurred in.
March 22, 1983	Third reading, concurred in.

IN THE SENATE

March 23, 1983	Returned to Senate with amendments.
April 4, 1983	Second reading, amendments concurred in.

April 5, 1983

Third reading, amendments concurred in. Ayes 40; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

MINUTES OF MEETING
SENTATE JUDICIARY COMMITTEE
February 11, 1983

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Senator Frank Hazelbaker on February 11, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Chairman Turnage and Vice-Chairman Crippen, who were excused.

CONSIDERATION OF SENATE BILL 371: Senator Fuller, sponsor, advised that the purpose of this bill is to provide that a child custody decree can be modified to consider placement of a child with the parent he desires, when the child reaches age 14.

PROPONENTS: Fred Easy, a Helena resident, spoke in support of this bill, saying he felt the current statute restricts changes in custody. He spoke about his own family situation and the need for young people to have their desires regarding their placement considered. Written testimony was submitted for inclusion in these Minutes (Exhibit "A").

Chuck Smith also spoke as a proponent to this bill. He reviewed the current law which requires the non-custodial parent to show that the custodial parent is unfit and he felt it was not fair to require a child to testify against a parent they love. He stated that children of age 14 are capable of making important decisions regarding their life. Written testimony was also submitted (Exhibit "B").

There being no further proponents, no opponents, and no discussion by the Committee, the hearing was closed.

CONSIDERATION OF SENATE BILL 373: Senator VanValkenburg advised that he was sponsoring this bill at the request of a title company in Missoula. Section 2 would provide for validation of conveyances that have technically defective executions in them. This will assure that no challenge can arise that will affect the rights of the purchaser previous to 1983. Section 1 will validate unacknowledged deeds. Actions now pending in the courts will not be affected under the provisions of SB373.

There being no proponents or opponents, and no questions from the Committee, the hearing was closed.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-11-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)			✓
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)			✓

EXHIBIT "A"
February 11, 1983

[redacted] I believe our young people have a right to input their desires upon a court requesting a custody modification upon a court. The existing statue restricts changes in custody.

Sec. 1 (c) disenfranchises a child for expressing his desires unless the petitioner and child under oath ~~atted~~ alleges and proves the childs "present environment endangers seriously his physical, mental or emotional health." This requirement completely ignores the wishes & desires of a young child who has attained an age of reason (d)

Opposed custody changes can at present
be made only pursuant to the petitioner
proving that section 1(c) exists.

The result is that this section has set
in concrete that the first custody situation
for all practical intents & purposes unalterable.

Prior to 1975 allmost ALL divorces
decreed that children of tender age regardless
of sex were awarded to the mother unless she
were shown unfit.

In 1979 Sec 1(c) was codified.
This 1979 law affects all divorces. The
young children of pre 1979 divorces are now reaching
an age of reason or are 14 yrs of age or

"A"
2-11-83

original custody ~~decision~~ award their input and opinions were not considered in most cases due to their tender ages. I believe these young people should be given an opportunity to be loved and nurtured ~~by~~ the influence of both their parents. However, section 1 (c) puts a protected individual who desires a change in custody in a position ~~where~~ when the change is opposed of advocating the existance of the adverse conditions described in the section.

Prior to the 1979 codification of 1 (c) the courts historically modified custody based upon the best interests of the minor

"A"
2-11-83

the protected persons request and se
n unwritten but fairly well documented,
ccepted and adhered to rule that it
ould listen to the testimoney of a child
ho had reacked the age of 14. reasoning
hat the child had reacked the age of
reason and had the ability to input
nd question what his custodial
relationships should be.

The courts also historically
have looked to legal precedents that
had been established in the appointment
f a guardian for a minor.

"A"
2-11-87

Why 14!

In Montana
We protect a young persons legal right to appoint or remove a guardian. Under guardian and ward laws a protected person 14 yrs of age or older can.

i.e. sec 72-5-410 MCA
Nominate their own guardian/conservator of ~~this~~ assets when both ~~of this~~ parents are dead
They can also petition to remove an appointed guardian conservator i.e. sec 72-5-234 MCA, and
They can object to a testamentary guardian appointed in a will. ie. 72-5-234.

These statues establish a precedent knowledging that upon reaching the age of 14 a protected persons opinions and desires

"A"
2-11-83

T. Age Statues

Constitution statues have always existed addressed age criteria regarding when citizens can assume legislated rights. Citizens cannot be denied the right to vote if they are 18 yrs of age or older. Prior to the adoption of the 1972 MT. constitution the age of majority for girls was 18 and 21 for boys. The 72 constitution reduced the age of majority for all citizens to 18. Age statues in effect codify when a citizen has reached an age of reason. i.e. ~~18 for voteing~~, 35 for president of the U.S., and 30 to become a US Senator, 18 for voteing, 14 for nominating a guardian.

8

"A"
2-11-83

Rebutal to Opposition

ON opinions where 1(c) establishes stability.

1. Section 1 still requires that the court serve the best interest of the child.

2. The child has the right to be loved, RAISED & nurtured by living with both his parents during his formative years.

3. An age of reason is best codified by historically accepted guardian and ward laws for protected persons. 14!

EXHIBIT "B"
February 11, 1983

Dear Honorable Ladies & Gentlemen,

BEST COPY AVAILABLE

My name is Charles Smith & I am here to express my support of Senate Bill 371.

Under current Montana law pertaining to change of custody as exists in the first two sections of the bill. That the custodial parent can keep the child. In most [illegible] to court.

In the third section [illegible] two parents are put into an extremely painful [illegible] the non custodial parent must prove that the custodial parent is endangering the physical, mental or emotional health of the children [illegible] by judicial interpretation under this third section the non custodial parent is required to prove that the custodial parent is undergoing some extremely harmful acts toward the children.

This is a very unfortunate situation which often causes problems for the children.

(2)

"B"
2-11-83

In my own care my daughters are punished & on occasions knocked down & struck by their mothers paramedmedich. When I confronted my ex-wife with this fact she denied it, however the children admitted to me that I was correct & was punished for telling me.

On the chance that the girls were playing their mother & parent card off I took the girls to see a psychologist who confirmed that the girls were not telling the truth and that the warning signs were present. I was also told that one of the girls may suffer some mental problems from the incidents. The psychiatrist also said that he believes it to be family secrets & that it could be resolved if the parents sought professional help & counseling. This was brought by [illegible] & I believe that I was not a fit parent & deserved custody. Due enough evidence to show serious abuse & mental ~~abuse~~ or emotional damage

BEST COPY AVAILABLE

change of custody.

(3)

1-B"
2-11-83

[illegible] a village [illegible] and
by the possible wind up [illegible]
[illegible] painted by [illegible]
[illegible] and [illegible]
[illegible] of [illegible]
[illegible] a chance to [illegible]
[illegible] wheat [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

(This sheet to be used by those testifying on a bill.)

NAME: Fred Easy DATE: _____

ADDRESS: Helena MT

PHONE: _____

REPRESENTING WHOM? Self.

APPEARING ON WHICH PROPOSAL: SB 371.

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

was taken on Senator Crippen's do pass motion. A tie vote was recorded. Senator Crippen then moved to TABLE SB313. A roll-call vote was taken and this motion carried with Senators Halligan and Mazurek voting in opposition.

ACTION ON SENATE BILL 351: The bill, as previously amended, was ready for consideration by the Committee. Senator Mazurek moved SB351 DO PASS AS AMENDED. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 354: The Committee discussed how SB354 gives priority to agisters' liens through many examples. The consensus was that there would not be a problem with small repairs, but larger amounts could be dangerous. Senator Berg suggested inserting a dollar limit. Concern arose with subsection (2) and the wording "30 days after payment is due." The Committee agreed that the language deleted from page 1, lines 14 and 15 should be reinserted. Various suggestions were given for the time period for notice. Senator Crippen moved to reinsert the original language on page 1, lines 14 and 15 and to increase the current 10 day provision to 30 days. This motion passed unanimously. The Committee felt the saving clause was appropriate as it now reads. Senator Mazurek moved SB354 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 373: The Committee agreed that SB373 is a good relief bill for title insurance companies. Senator Mazurek moved SB373 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 371: The intent of SB371 was discussed. It would allow a 14-year-old child to express their desires as to which parent they are placed with. It was agreed that a judge would not be bound by this provision. Senator Mazurek moved SB371 DO PASS. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 381: The Committee discussed the need to refer to "a grandparent" so that all grandparents of a child could be granted visitation rights, rather than "one or both grandparents" as stated in the bill. Senator Hazelbaker moved to amend the bill to refer to "a grandparent." This motion passed unanimously. Senator Brown then moved SB381 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 386: Senator Mazurek moved SB386 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 391: It was agreed that there is a need to raise the felony threshhold from $150 to $500 to provide for inflation and to ease the burden on district courts. The Committee felt the remainder of the bill was unnecessary. Senator Crippen moved to amend SB391 by retaining everything through section 3 and deleting

STANDING COMMITTEE REPORT

February 15, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 371

Fuller

Respectfully report as follows: That Senate Bill No. 371

introduced bill

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.

came up and he wondered when was the last time they raised this. REPRESENTATIVE SPAETH replied that he said in 1973.

MR. ANDERSON said that the original bill he drafted did not have anything about restitution in it; and he thought that when Senator Eck had this drafted by the attorney general's office, the restitution provisions were put in.

REPRESENTATIVE EUDAILY wondered what the sections were that were being repealed. MS. DESMOND replied that 46-8-114 is entitled: Time and method of payment of costs, and says when a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. She said that 46-8-115 is entitled: Effects of nonpayment of costs, which provides for what will happen when a defendant fails to pay the costs that the court ordered him to pay.

REPRESENTATIVE HANNAH asked why the last half of the bill was taken out. CHAIRMAN BROWN replied that the Senate did not like it. REPRESENTATIVE HANNAH wondered why they did not like it. CHAIRMAN BROWN replied that Senator Halligan has a bill coming over Monday that is similar on restitutions and they should be worked on together.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 371

SENATOR FULLER, District 15, Helena, said that this was a bill modifying the child custody law and gives another consideration for modifications when the child reaches 14 years of age.

SENATOR MAZUREK, District 16, Helena, said that the title of this bill is a little misleading and this applies only to a modification of an existing decree. He indicated that the court must find (1) that facts have arisen since the original decree was entered and (2) a change has occurred in the circumstances of the child or his custodian and as a result of that, modification of the prior decree is necessary to serve the best interests of the child.

CHUCK SMITH, representing himself, gave testimony in favor of this bill. See EXHIBIT B and C.

FRED EASY, representing himself, offered a statement in support of this bill. See EXHIBITS D and E.

There were no further proponents and no opponents.

SENATOR FULLER closed by saying that he spoke to four different lawyers in Helena that handle divorce cases; and they felt that this was a reasonable thing to do.

REPRESENTATIVE CURTISS wondered how they arrived at the magic age of 14. SENATOR FULLER responded that several statutes use the age of 14. MS. DESMOND thought that age 12 was chosen, as she remembered, because it had some religious significance; but there was a feeling that perhaps with some children that this was too young and age 14 is a commonly used age to break off between young children and youth. REPRESENTATIVE ADDY said that historically it has been divided in multiples of 7 - at the age of 7, they are no longer a child; at the age of 14, they are adolescent; and at the age of 21, they are an adult - that is how they came up with the 21-year-old drinking age.

REPRESENTATIVE SPAETH questioned if the judge has any discretion, as on line 18, it says, "In applying these standards, the court shall retain the custodian appointed pursuant to the prior decree unless:". SENATOR MAZUREK replied that you have to meet the initial requirements (1) the facts have changed, and (2) it is in the best interest of the child.

REPRESENTATIVE SPAETH said, that if that is the case, why is (d) needed then. SENATOR MAZUREK answered that if you have an existing custodian, you first have to prove (c). If the custodian won't agree and the child has not been integrated, they would still have to prove serious physical, mental, moral or emotional endangerment to his health. He indicated that the intention was not to allow the child to chose as a matter of right - that the idea was that this was something that the judge could take into consideration once the child reaches that age.

REPRESENTATIVE HANNAH commented that he had a friend who was involved in a similar situation; he had a daughter who

had reached the age of 12 or 13; he had tried to get a change in the decree; the judge called her in and talked to her for a while and then changed custody. He wondered if he has the option to do that now. SENATOR MAZUREK replied that he does, but he has to meet one of these tests - a, b, or c.

REPRESENTATIVE HANNAH said that he was obviously stretching (c) in order to do that; and wondered if these were the only criteria to do that. SENATOR MAZUREK responded that in terms of modification, yes.

REPRESENTATIVE EUDAILY said that under (d), the rest of these standards are true but if the child does not desire modification, what would happen then. SENATOR MAZUREK responded that he supposed that you would have to look at the other standards; if the court found that the child's environment endangered his physical, mental, moral or emotional health, the court could do it. He explained that if the existing custodian is letting the child run free to do whatever he wants and the other parent comes in and says that this child must be disciplined, even if the child does not want a change, he felt that the court could come in and make a change.

REPRESENTATIVE EUDAILY asked if it was necessary to have the language, "desires the modification" in there if they can change anyway. SENATOR MAZUREK replied that in the situation where a child legitimately desires a change and has very good reasons for wanting the change, he does not think that this would happen unless the child's environment endangers his physical, mental, moral or emotional health. He said that all they are trying to do is get around (c), once the child has reached age 14 and to at least allow the court to consider this.

CHAIRMAN BROWN stated that he thought the language was good the way it is. He contended that it basically says that the court shall not modify a prior custody hearing unless it finds (1) that a change has occurred in the circumstances of the child or his custodian and (2) that the modification is necessary to serve the best interest of the child. He continued that the bill then lists the four exceptions; and he wondered if this did not give the court sufficient criteria. SENATOR MAZUREK replied that, when you go through it like that, he thought that maybe Representative Spaeth may be correct.

REPRESENTATIVE SPAETH commented that it is kind of screwy the way it is written and he was not sure who was right or wrong.

There were no further questions and the hearing was closed.

SENATE BILL 354

SENATOR CHRISTAENS said that this bill would extend the time an agister will have to file a lien from ten days to thirty days. He explained that, as it stands right now, if a wrecking yard receives a wrecked vehicle, they only have ten days to file the agisters' lien. He also stated that the consumer has an additional twenty days to take care of this payment.

BILL ROMINE, representing the Montana Automobile Dismantling and Recycling Association, informed the committee that this bill came up as he was doing some research and found that the agisters have a very short period of time in which to notify the lienholders of a lien. He explained that if you take your automobile down to a mechanic, who performs the work on it, he has a lien now depending upon his possession; he is not required to give it to you until you pay the bill; this is an old, old lien and came about from dealing with horses and cattle. He indicated that the problem with existing law is that if they need to order a part, it may take ten days or two weeks to find a part; and, in the meantime, under present law, the mechanic needs to notify the bank that they are going to claim a lien, which will cut off the bank's lien. He said that before the Senate amended it, it would have provided that you had the time from when the bill was presented, but the Senate felt that was too long a period of time. He emphasized that all this does is extend the time.

There were no further proponents and no opponents.

SENATOR CHRISTAENS closed.

REPRESENTATIVE KEYSER thought we had a lien statute before the legislature this year and he wondered if this was in conflict. SENATOR CHRISTAENS responded that it was not - that was an artisan lien and this is an agisters' lien.

A vote was taken on Representative Ramirez's amendment and it was adopted unanimously.

REPRESENTATIVE RAMIREZ moved that the bill be TABLED. REPRESENTATIVE IVERSON seconded the motion.

REPRESENTATIVE SPAETH asked if the reason for tabling this was not to hold HB 888 hostage in the Senate, because if it is, he is very much opposed to HB 888 and he did like some of the aspects of SB 347 and he did not want to have SB 347 held in hostage.

CHAIRMAN BROWN said that this is not the intent.

REPRESENTATIVE IVERSON commented that the way the politics are over there now, that they couldn't hold it hostage with this - that there are other forces and bigger chips being played.

REPRESENTATIVE SPAETH stated that he was very much in support of SB 347, and he thought that they have to do something to reassure the landowners out there not to lock their places up. He said that HB 888 is a navagability question and unrelated to prescriptive easements. He emphasized that he would like to see this one go and HB 888 die.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the meeting be adjourned. The meeting adjourned at 11:18 a.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 14 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 371

third reading copy (blue color)

"AN ACT PROVIDING THAT IF IT IS IN THE BEST INTEREST OF THE CHILD, A CHILD CUSTODY DECREE MAY BE MODIFIED WHEN A CHILD AGED 14 YEARS OR OLDER DESIRES THAT IT BE MODIFIED; AMENDING SECTION 40-4-219, MCA."

Respectfully report as follows: That SENATE 371 Bill No.

BE AMENDED AS FOLLOWS:

1. Title, line 4.
Following: "THAT"
Strike: "IF"
Insert: "WHEN THE CIRCUMSTANCES OF A CHILD'S CUSTODIAL SITUATION HAVE CHANGED AND WHEN"

2. Title, line 5.
Following: "IN THE"
Insert: "CHILD'S"
Strike: "OF THE CHILD"

3. Title, line 6.
Strike: "WHEN A"
Insert: "IF THE"
Following: "CHILD"
Strike: "AGED"
Insert: "IS"

Following: "YEARS"
Insert: "OF AGE"
Following: "OLDER"
Insert: "AND"

DAVE BROWN Chairman.

STATE PUB. CO.
Helena, Mont.

March 14, 19 83

4. Page 1, line 11.
Strike: "shall not"
Insert: "may, in its discretion"

5. Page 1, line 12.
Strike: "unless"
Insert: "if"

6.. Page 1, line 18.
Following: "child"
Strike: ". In" through "unless" on line 19.
Insert: "and if it further finds that"

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 371 DATE March 14, 1983

SPONSOR SENATOR FULLER

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
C. Thomas Smith	1326 Grant Helena	—	X	
Fred Easy	POBox 34 Helena, MT	self	X	
Sen Dan Fuller	Box 4124 - Helen	Self-Sn Dist #15	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit D
SB 371
3-14-83

~~[illegible] amendment to~~

~~[illegible]~~, I urge you to ~~[illegible]~~ believe our young

ple have a right to input their desires

~~a court~~ requesting a custody modification

on a court. pm 1 (c)

existing statue restricts changes in

stody.

Sec. 1 (c) disenfranchises a child from

ssing his desires unless the petitioner and

under oath ~~alled~~ alleges and proves the

s "present environment endangers seriously his

ical, mental or emotional health." This

rement completely ignores the wishes & desires

a young child who has attained an age of

son.

The rest is included in Senate Docum

Exhibit B
SB 371
3/14/83

In my own case my daughters are punched and on occassion knocked down and kicked by their mother as a form of punishment.

When I confronted her with this she denied it, however the children related later that they were disciplined for telling me this. On the chance that the girls were fabricating the stories about the punching & the kicking I took them to a local psychologist who confirmed that the girls in fact were telling the truth and these unfortunate incidents had in fact occured.

Under current law ~~however~~ just knowing that the punching and kicking is going on is not enough. In order to take the evidence into court you must have witnesses who are willing to testify that they saw cuts and bruises on the children and that they are sure they were caused by being punched or kicked. This is a very difficult type of thing to prove. Consider also that the damage done to the childs body may be mild when compared to the damage done to the childs mental and emotional well being by such occurences.

As parents I'm sure none of you would want to give up the chance to raise

Exhibit E
SB371
3-14-83

WITNESS STATEMENT

Name Fred Easy Committee On

Address PO Box 34 Helena MT. Date 14 MAR 83

Representing Self Support Yes.

Bill No. SB 371 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: attached.

1. I.e. sec 72-5-410 MCA

2. allows a young person 14 yrs of age or older
to nominate or object to a court appointed
guardian conservator. This section recognizes
3. that a 14 yr old has attained an age of reason.

I support SB 371 as it will allow a
4. young person an opportunity to be loved,
raised & nurtured by living with both his
parents during their formative years, without
requiring that the child ~~of~~ petitioner ~~is~~
prove the custodial parent is unfit
and that the childs "present environment endangers
his physical, mental or emotional health as
presently required.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Senate BILL NO. 371

INTRODUCED BY Fuller Mazurek Day Dave Brown Yardley

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF IT IS IN THE BEST INTEREST OF THE CHILD, A CHILD CUSTODY DECREE MAY BE MODIFIED WHEN A CHILD AGED 14 YEARS OR OLDER DESIRES THAT IT BE MODIFIED; AMENDING SECTION 40-4-219, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him; or

(d) the child is 14 years of age or older and desires the modification.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(3) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221."

-End-